Walters&Sklyar LLP

CARES Act: SBA Loans

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law on Friday March 27, 2020, introduces the Paycheck Protection Program (the PPP) with $349 billion in funding and the goal of preventing job loss and small businesses failure due to losses caused by the COVID-19 pandemic. The new PPP loan program is available for eligible small businesses, including sole proprietors, non-profits, veterans' organizations, and tribal business concerns, to provide a forgivable loan to cover payroll and other costs. Additionally, the CARES Act greatly expands the Economic Injury Disaster Loan (EIDL) Program with $10 billion of additional funding for the SBA.

Paycheck Protection Program

- PPP loans are 100% federally guaranteed loans for small businesses intended for companies to maintain their payroll levels and allow partial loan forgiveness, as described below.
- The maximum amount of a PPP loan available to each borrower is equal to the lesser of: (a) $10 million, or (b) 2.5 x its average total monthly payroll costs, as defined in the Act.
- The PPP Loans are unsecured loans requiring no collateral, no personal guarantee, and no showing that credit is unavailable elsewhere.
- The PPP loan, to the extent not forgiven, has a maximum 10-year term, and the interest rate may not exceed 4%.
- PPP loans are made available through SBA-approved lenders, who must offer a 6-12 month deferment on payment of principal, interest, and fees.
- The loans are available until June 30, 2020 for eligible companies to cover the cost of:
    - Payroll
    - Health care benefits and related insurance premiums
    - Employee compensation (with some limitations for employees with salaries over $100,000 and exclusions for employees based outside the U.S.)
    - Mortgage interest obligations (but not principal)
    - Rent and utilities
    - Interest on debt incurred prior to the loan
- To be eligible for a PPP loan, a company must be either
    - a small business concern under the SBA regulations, or
    - a business concern, nonprofit organization, veterans' organization, or Tribal business concern that employs not more than 500 employees (or the number of employees in the size standard applicable to the borrower's industry, which for some industries is up to 1500 employees).

- Eligible companies must have been in operation on February 15, 2020 and must have, as of that date, had employees for whom the entity paid salaries and payroll taxes, or paid independent contractors.

- When applying for a PPP loan, a borrower must certify that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient and acknowledge that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.

- A borrower of a PPP loan is eligible for dollar-for-dollar loan forgiveness for amounts spent during the 8-week period after the origination date (not to exceed the principal of the loan), subject to proper documentation, on:

    - rent
    - defined payroll costs
    - mortgage interest
    - utilities

- To receive this dollar-for-dollar loan forgiveness, workers need to remain employed through the end of June.

- In the case of reduced headcount, lenders may reduce the amount of forgiveness for businesses that lay off employees during the first eight weeks following the loan. If wages of employees who earn less than $100,000 a year are reduced, the level of forgiveness may also get reduced.

- Businesses that have let employees go before accepting the loan will not be subject to penalties. If those businesses rehire employees after accepting the loan, they'll receive additional credit to cover wages.

Economic Injury Disaster Loan (EIDL) Program

- Companies in all 50 states, District of Columbia, and some U.S. territories are eligible for EDIL loans relating to economic injury caused by the COVID-19 pandemic.

- Companies that have already applied for or received EIDLs due to economic injury attributable to the COVID-19 pandemic can seek to refinance their EIDL loans under the PPP to take advantage of the PPP's loan forgiveness provisions.

- The CARES Act expanded EIDL eligibility for the period between January 31, 2020 and December 31, 2020, to include:

    - any business with not more than 500 employees
    - any individual operating under a sole proprietorship or as an independent contractor

- any cooperative, ESOP or tribal small business concern with not more than 500 employees.

- Entities previously eligible to receive SBA EIDLs, including small business concerns, private nonprofit organizations and small agricultural cooperatives, remain eligible for such loans under the more favorable terms authorized by the CARES Act.

- To qualify for an EIDL under the CARES Act, the applicant must have suffered "substantial economic injury" from COVID-19. EIDL loans under the CARES Act are based on a company's actual economic injury determined by the SBA (less any recoveries such as insurance proceeds) up to $2 million.

- EIDL loans may be used for payroll and other costs as well as to cover increased costs due to supply chain interruption, to pay obligations that cannot be met due to revenue loss, and for other uses.

- The interest rate on EIDL loans is 3.75% fixed for small businesses and 2.75% for nonprofits. The EIDL loans have up to a 30-year term and amortization (determined on a case-by-case basis).

- The CARES Act also permits applicants to request an advance of up to $10,000 to pay allowable working capital needs, which is expected to be paid by the SBA within 3 days. This advance is essentially a grant and is not required to be repaid, even if the application is denied. However, the amount of the advance must be deducted from any loan forgiveness amounts under a PPP loan, described above.

- EIDLs under the CARES Act do not require personal guarantees for loans up to $200,000, but do require personal guarantees by owners of more the 20% of the borrower for loans in excess of that amount.

Given the very favorable terms of these two SBA loan programs and the potential for loan forgiveness under PPP loans, eligible small businesses who have been economically impacted by the COVID-19 pandemic should strongly consider taking advantage of these loan programs. Applications for EIDL loans should be submitted directly to the SBA, while PPP loans will be available from SBA-approved lenders.

Please reach out to us with any accounting, tax, and/or business questions you might have. We are here to support and assist you and your organization with the countless challenges that you are facing in responding to the coronavirus outbreak.